

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
THOMASVILLE DIVISION**

ETHEL D. KILGORE,

Claimant,

vs.

JO ANNE B. BARNHART,
COMMISSIONER OF
SOCIAL SECURITY,

Defendant.

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CASE NO. 6:05-CV-47 (HL)

SOCIAL SECURITY APPEAL

RECOMMENDATION AND ORDER

Presently pending before the Court is Claimant's attorney's Motion for Attorney's Fees pursuant to the Equal Justice Act ("EAJA"), 28 U.S.C. § 2412(d). As allowed by the EAJA, Petitioner has filed a motion for attorney fees and costs. Petitioner seeks an award of attorney's fees in the amount of \$3,742.12, based upon an hourly rate of \$160.40 for 14.05 attorney work hours and \$65.00 for 22.9 paralegal work hours. The Defendant has no objection to the award requested by Petitioner.

Accordingly, Petitioner has met his burden and it is Recommended that his Motion for Attorney fees under the EAJA be **GRANTED** as follows: Petitioner is entitled to \$3,843.83, based upon an hourly rate of \$162.89 for 14.3 attorney work hours and \$65.00 for 23.3 paralegal work hours.

Petitioner has also moved the court, pursuant to his admittedly premature request for attorney's fees under 42 U.S.C. § 406(b), to require the Defendant to notify the court and

Claimant at such time when any past-due benefits are awarded in this case on remand by the Commissioner. The court finds, however, that pursuant to proper procedure, the Claimant will be notified by the Commissioner should any award of past-due benefits be authorized. The court will not require that the Defendant, or the court, advise Petitioner of such an award as it places upon them an undue burden of notification in what is essentially a matter between Claimant and Petitioner. As such, that request is DENIED. To the extent that Claimant is requesting thirty days following any award of past-due benefits to file a proper 42 U.S.C. § 406(b) motion for attorney's fees, however, the request is GRANTED.

WHEREFORE, it is the recommendation to the United States District Judge that Petitioner's Motion for Attorney's fees pursuant to 28 U.S.C. § 2412 (d) be **GRANTED**, and that payment be forwarded to said Petitioner in the amount of \$3,742.12. It is further ORDERED that Petitioner's request to be notified by the Defendant should any past-due benefits be awarded to Claimant be DENIED. Petitioner's request for thirty days following any award of past-due benefits to file a proper 42 U.S.C. § 406(b) motion for attorney's fees is GRANTED.

Pursuant to 28 U.S.C. § 636(b)(1), Claimant may serve and file written objections to the Recommendation with the United States District Judge within ten (10) days after being served a copy.

SO ORDERED, this 6th day of December, 2007.

S/ G. MALLON FAIRCLOTH
UNITED STATES MAGISTRATE JUDGE

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